CONFERENCE OF SALVATION ARMY PRISON AND COURT CHAPLAINS FROM AUSTRALIA AND NEW ZEALAND
Wednesday 1 September 2004, 7pm
Albert Park Hotel

Chief Justice Paul de Jersey AC

May I express my welcome to you all, especially those who have joined us from other States and from across the Tasman. I am very pleased to have the opportunity to deliver the opening address at this important conference, and particularly so because of the identity of our host The Salvation Army, an organization with such a clear focus on those individual persons within our communities who lack advantage: unfortunately there are too many of them.

A graphic illustration of the extent of that disadvantage is to be seen in the homeless. Unless one walks the alleys and parks at night time or serves at the soup kitchens, one could not begin to comprehend the large extent of that problem. It is a problem The Salvation Army does its best to alleviate. Homeless people are inevitably vulnerable at the hands of those who would exploit them, including, as we know, physically imperil them. Relevantly to the theme of this conference, they are also at risk in relation to the criminal justice system.

A recent public seminar at the Supreme Court in this city highlighted that risk. The subject was the impact of public order law in this State, particularly a piece of legislation called *The Vagrants Gaming and Other Offences Act*. That 1931 Act dates from the era of the Great Depression. Section 4 of the Act creates an offence of vagrancy, attracting a maximum penalty of a $100 fine or six months imprisonment. The species of vagrancy under the legislation include having no visible lawful means of support; being an habitual drunkard and behaving in a disorderly manner in a public place; and loitering in a public place to beg. One of the speakers rather vividly suggested that the

legislature had thereby criminalized the state of poverty, the condition of alcoholism, and the act of begging for survival (Ms Tamara Walsh, Queensland University of Technology). She also provided some data on the extent to which persons are being charged under that legislation.

The data was startling. In the year 2001-02, 203 persons were convicted of begging, 959 for being drunk and disorderly, 2,523 for offensive language, and 7 for having no visible means of support. Another survey, of some 57 persons charged under such provisions in February this year, showed that 60% were very poor homeless persons dependant solely on social security payments, 41% were indigenous, 39% were aged between 17 and 25 years, and 10% were said in court to suffer from severe mental illness or intellectual disability. Most of those persons were fined, with the average fine for the poor and homeless being $194.

It is not my province this evening to comment on any social utility in such legislation, or to contend that persons are being charged who should not be charged. The police service faces difficult choices in enforcing legislation of that character. My point is to illustrate the jeopardy in which the strikingly disadvantaged of our community stand. Sometimes of course this type of offending leads to incarceration, and that is where prison and court chaplains have the capacity to exert a strongly beneficial influence, an influence based on the example of the founders of the Salvation Army.

Please excuse my reminding you that on 5 September 1880, Edward Saunders and John Gore led the first Salvation Army meeting from the tailgate of a greengrocer's cart in Adelaide's Botanic Park. When Gore said: "If there's a man here who hasn't had a square meal today, let him come home to tea with me", he was identifying the Army's concern for both a person's soul and body. The contemporary approach is comprehensive, as

we know, but it is based on the same fundamental human concern, in this Christian context.

No doubt when offering that comprehensive concern for the inner well being of prisoners who come from the severely disadvantaged grouping to which I have referred, you confront serious challenges, especially, for example, "why am I punished for harming no one but myself?" I expect it is difficult for clergy of the Christian tradition, also, to come to grips with the first purpose of sentencing specified in our Queensland *Penalties and Sentences Act* 1992 – that is, punishment, or, not to put too fine a point on it, retribution; and the allied purpose of community denunciation. I imagine you are sometimes taunted with charges of hypocrisy, that you find yourselves able to support and work within a secular system which does not epitomise the Christian ideal of forgiveness.

Prisons are an unfortunate necessity. The need for them is a blight on a supposedly sophisticated society. They are expensive to run, and generally unproductive. From time to time, they are, we are told, overcrowded. For the inmate with prospects of a decent life, the tedium of the experience must be mind numbing. However modern the facility, prisons or "correctional centres" as we euphemistically call them these days, are often places where fear, despondency and regressiveness prevail. I do not say this critically of prison authorities who do their best. It is, however, inherent in the concept.

Having visited prisons myself, I can assure those inclined to criticize the system as unduly generous to the prisoner, that the presence of television, a gymnasium and the like, are pale compensation for the essential detriment: lack of freedom, including freedom to choose your friends and associates.

In this year which marks in October the 150th anniversary of the birth of Oscar Wilde, we should perhaps give him the last word, noting the sentiments he expressed in the Ballad of Reading Gaol:

> "I know not whether Laws be right,
> or whether Laws be wrong;
> all that we know who lie in goal
> is that the wall is strong.
> And that each day is like a year,
> a year whose days are long."

Society has struggled to devise alternatives to imprisonment. The system of probation and community service is generally beneficial and well utilized, and the Drug Court innovation, though expensive to operate, is worthwhile. Judges are acutely aware of the need to treat imprisonment as a penalty of last resort. But the sad fact is that many offences must be visited with imprisonment, and not just crimes of violence. The community rightly demands it, often for its own protection. There are some criminals who are harmless enough, except in relation to other people's property. "Thieves", said G K Chesterton, "respect property. They merely wish the property to become their property so that they more perfectly respect it." A burglar once explained in my court that he found it "inconvenient to be poor". Prison sentences are often necessary to deter those offenders and hopefully rehabilitate them.

I focused earlier this evening on the disadvantaged, especially the homeless, because they lie at the heart of the mission of The Salvation Army. But of course the prison population to which many of you tend is much more diverse, and as chaplains, tending to the spiritual welfare of young offenders, and serious violent offenders, would I expect pose particular challenges.

It will not surprise you to hear that in my experience, the sentencing of offenders against the criminal law is a judicial officer's most difficult task. It is done regularly by hundreds of Magistrates and Judges throughout the nation. The difficulty stems from the need for fine balancing of various, contrasting interests: those of the offender, the victim and the community. As court and prison chaplains, you are no doubt frequently exposed to the frustrations of prisoners who cannot, or will not, either understand or accept the reasonableness of the treatment given them by the courts. It will often have been your unhappy lot to seek to explain, reassure and redirect, and the need to do one's best to succeed in that mission is acute in the cases of young offenders and intractable offenders. May I confirm the community's gratitude for all your good work.

As to young offenders, Queensland's *Juvenile Justice Act* presupposes their being penalized with a degree of tenderness: the maximum penalties are lower, the sentencing options are broader, and the facilities for rehabilitation are more extensive. Yet, as at least one recent decision of the Court of Appeal in this State has shown, juveniles who commit violent crime cannot expect the desirability of rehabilitation to overwhelm the need for appropriately punitive and deterrent penalties. The child offender in custody provides the chaplain with a unique opportunity for influence, both for the benefit of the child and also thereby the community.

A probably more daunting challenge rests in prisoners within two recently created categories in this jurisdiction: serious violent offenders who are obliged to serve 80% of their terms, and those subject to indefinite sentences because they pose a serious danger to the community. I suppose, of those willing to speak with you, the goal is to seek to move the prisoner beyond the desperation which will often characterize his plight. From my own observations, rehabilitation initiatives in correctional centres are these days reasonably comprehensive and professionally run. You have the capacity to

add an important further level of redevelopment, even with those who have resorted to serious violence against their fellow beings.

And at the end of the day, it is I suppose largely assumed that having endured these problems, having done your utmost to rise to those challenges, you are all then more than up to restoring your own spiritual and emotional strength! Just as we hope the indefinitely incarcerated prisoner will rise above his desperation, so we trust you continue to be able to rise above your frustrations, enlivened, even if only occasionally, by a spark of rebirth you are able to fire in an otherwise lost soul.

In wishing you well for a productive and rejuvenating few days, I am very pleased now formally to open the 2004 Conference of Salvation Army Prison and Court Chaplains for Australia and New Zealand